



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery shortly after he made the application on May 13, 2011. Neither the Landlords nor the Tenants could remember the exact date of service of the documents, but the Tenants said they received the hearing package in the middle of May, 2011. Based on the evidence of the Landlords and the Tenants, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issue(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is the Landlord entitled to retain the Tenants' security deposit?

Background and Evidence

The Landlord said a fire occurred in the Tenants' rental unit on April 15, 2011 as a result of the Tenant boiling oil on the stove top. The Landlord said the Tenant tried to put the fire out with a fire extinguisher from the hallway, but the fire was not completely extinguished and the fire department was called. The Fire Department put the fire out and secured the rental unit and building. As a result of the fire the Landlord said they had to make extensive repairs to the rental unit and to clean and repair some of the common areas. Consequently they have applied for monetary compensation from the Tenants as follows:

Loss of Rental Income	- May, 2011	\$ 810.00
	- June, 2011	\$ 810.00
Cleaning, repairs and painting	-13.5 hours @ \$20.00 per hour	\$2,610.00
	-87.5 hours @ \$15.00 per hour	\$1,312.50
	-paint	\$ 314.41
Flooring – new linoleum in kitchen and entrance		\$ 214.76
_ labour to install		\$ 270.00
New kitchen cabinets @ 50% of cost		\$2,512.72
New kitchen stove		\$ 683.20
Install range hood		\$ 114.24
Hauling fees for damaged items and debris		\$ 190.40
Stream Cleaning Carpets and floors		\$ 400.00
Filing fee for this proceeding		<u>\$ 100.00</u>
Total		<u>\$10,342.23</u>

The Landlord said they provided receipts for all the items claimed and they tried to reduce the costs of the repairs by doing the work themselves. The Landlord said they had a verbal quote from a professional restoration company for \$15,000.00, which the Landlord said he knew he could do the repairs for less money. The Landlord continued to say the owner of the property did not charge any of his time for organizing and dealing with the repairs and they have claimed 50% of the value for the kitchen cabinets replacement because not all the cabinets were damaged by the fire, but all the cabinets needed to be replaced to match the cabinets put in. As well the Landlord said they did not claim for dry wall supplies, or advertising the unit for rent and the repairs were done as quickly as possible so that the unit could be rented to a new tenant. The Landlord said the repairs were completed by the first week of June, 2011 and the unit was rent to a new tenant for July 1, 2011.

The Tenant said that they agree the damage to the unit was done by the fire that started on the stove top when they were boiling oil. The Tenant continued to say they do not agree with some of the monetary claims that the Landlord is making. The Tenant said she believes the Landlord has some responsibility because the fire alarm in the rental unit did not go off when the fire started and she had difficulty using the fire extinguisher from the hallway when she tried to put the fire out herself. The Tenant Advocate said the Landlord is negligent if these items did not work as they should have worked.

The Tenant continued to say that she is a professional cleaner and she believes that some of the damage could have been cleaned not replaced or painted. In addition the

Tenant said that the stove did not appear damaged from the pictures that the Landlord submitted into evidence.

The Tenants' Advocate said that she has concerns about the Landlord's monetary claim as no allowance has been made for economic life of the stove, cabinets and the lino flooring. She said these items were all old and the Tenants should not have to pay new price to replace the items. The Tenant Advocate continued to say they question the hours of labour for painting as approximately 150 hours appears excessive to paint a one bedroom unit.

The Landlord said the stove was approximately 5 years old and the cabinets were built in 1965. The Landlord continued to say all the cabinets needed to be replaced as the older style cabinets are different dimensions from new cabinets so you can not mix the new and old cabinets and do a good job. The Landlord continued to say the category of labour under painting also included cleaning the walls, repairing the walls, priming and painting the walls. The Landlord said it was not just painting.

The Landlord provided a Witness C.R. to testify. The Witness C.R. said he did the work at the unit and he charged \$20.00 per hour to do the work. He said he was paid approximately \$2,600.00 which works out to 130 hours. The Witness said he normally works for \$20.00 to \$35.00 per hour and he has 30 years of experience doing this type of work. The Witness also said it is his opinion that the stove was damaged as it was melted on the top and the counter top materials were blistered from the heat of the fire.

The Tenant continued to say that the Landlord had told them if they moved into another unit that the Landlord had they would not be charge rent at both units. The Tenant said it was on this understanding they started a new tenancy with the Landlord in a different building. The Tenant said they do not believe they owe the Landlord rent for May and June 2011 in the amount of \$1,620.00 for the rental unit that had the fire in it.

The Landlord said he did not agree to stop charging the Tenants rent for the unit with the fire if they moved into a different unit, but he said he would ask the owner if they could do anything about the rent. The Landlord/Owner said he did not agree to any adjustment in the rent and there was no mutual agreement to end tenancy signed on the unit with the fire. The Owner/Landlord said it is his understanding that the Tenants' owe the Landlord for the loss of rent for May and June, 2011 in the amount of \$1,620.00.

The Tenant said she agreed that there was no mutual agreement to end the tenancy signed or any notices to end tenancy on the unit that the fire happened in. The Tenant continued to say they sign a new tenancy agreement for the unit they moved into on May 1, 2011.

The Tenant Advocate said in her closing remarks that the Landlord may have been partial negligent with respect to the condition of the fire alarm and fire extinguisher, there was no consideration for economic life of the items damaged and therefore the amounts of the items claimed should be much less, there is no proof that all the items damaged were damaged solely a result of the fire and the Landlord did not mitigate or try to minimize his costs by getting competitive quotes, allowing the Tenants' to do some of the work and she said some of the labour costs were too high for the work done.

The Owner/Landlord said in his closing remarks that he and his staff made an every effort to minimize the cost of the repairs and he has not included any costs that he cannot justify.

Analysis

Section 32 (3) of the Act says a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In cases where a monetary claim is the result of damage to a rental unit the applicant must show proof that damage or a loss exists, proof that the damage or loss resulted solely because of actions or neglect of the respondent, the applicant must verify the loss and the applicant must mitigate or try to minimize the loss or damage.

The Landlord has shown a loss and damage exists by both parties agreeing that the fire happened and the fire caused damage in the rental unit. The Landlord and Tenant have also provided testimony that the Tenants' actions started the fire and therefore the Landlord has provide proof that the damages are solely a result of the Tenants' actions. The Tenant and her Advocate said the Landlord has some responsibility for the loss and damage because the fire alarm did not work and the Tenant had difficulty with the fire extinguisher. I find that the alarm had no bearing on finding the fire as the Tenants were in the unit at the time of the fire and the fire extinguisher did work. It is unknown how the fire extinguisher worked and if it was a result of the operator using the

extinguisher or if it was the extinguisher's condition. I find the Tenant has not established grounds to prove the Landlord was negligent.

The test of a loss claim must also show verification of the loss or damage. The Landlord has provided verification of the loss or damage by providing into written evidence receipts and invoices for the work done to repair the rental unit. These receipts and invoices establish proof of the amount of the loss or damage. There was much discussion about the amounts claimed for the repairs and what should be included in the repairs. I find the Landlord has established grounds to be awarded the labour and material costs of \$4,236.91 for cleaning, repairs, and painting. The Landlord has also established grounds for a claim for the linoleum floor replacement and the kitchen cabinets, but I accept the Tenant's argument that some provision should be made for economic life of the items replaced. I find the linoleum claim for \$484.76 is adjusted for economic life of the item by 50% resulting in an adjusted claim of \$242.38 and the Landlord's claim for the kitchen cabinets that were damaged by the fire are adjusted down by 75% as the cabinets are almost 50 years old. I find the claim for the kitchen cabinets is adjusted to \$628.18. The Landlord's claim for the replacement stove is also adjusted as I accept the Landlord testimony that the stove is 5 years old and has a life expectancy of 20 years, therefore the claim on the stove is adjusted to 5 years used of 20 years life $\times \$683.20 = \512.40 . Further I accept the Landlord's claim for the installation of the range hood of \$114.24, the hauling of debris of \$190.40 and the carpet cleaning of \$400.00.

With respect to the Landlord's claim for loss of rent for May, 2011 in the amount of \$810.00 and June, 2011 rent in the amount of \$810.00. From the testimony given, I find that there is no agreement to mutually end this fixed term tenancy and there were no notices from either the Landlord or the Tenant to end the tenancy. There is contradictory testimony that there was a verbal agreement to stop the rent payments on the unit with the fire when the Tenants moved into the new rental unit. In situations where it is just one parties word against the others the burden of proving a claim lies with the party making the claim and when it is just that parties word against that of the other party that burden of proof is not met. I find the Tenant has not met the burden of proof that there was an agreement to end the tenancy at the unit with the fire. Consequently, as this tenancy was a fixed term tenancy to August 31, 2011 and there is no evidence that it was ended prior to July 1, 2011, I award the Landlord with the lost rent for May and June, 2011 in the amount of \$1,620.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the damages. The Landlord will receive a monetary order for the balance owing as following:

Loss of Rental Income	- May, 2011	\$ 810.00
	- June, 2011	\$ 810.00
Cleaning, repairs and painting	-13.5 hours @ \$20.00 per hour	\$2,610.00
	-87.5 hours @ \$15.00 per hour	\$1,312.50
	-paint	\$ 314.41
Flooring – new linoleum in kitchen and entrance		\$ 242.38
	_ labour to install	
New kitchen cabinets @ 50% of cost		\$ 628.18
New kitchen stove		\$ 512.40
Install range hood		\$ 114.24
Hauling fees for damaged items and debris		\$ 190.40
Stream Cleaning Carpets and floors		\$ 400.00
Filing fee for this proceeding		<u>\$ 100.00</u>
Total		<u>\$ 8,044.51</u>
Less		
Security Deposit		<u>\$ 405.00</u>
Balance owing		<u>\$ 7,639.51</u>

Conclusion

A Monetary Order in the amount of \$7,639.51 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Residential Tenancy Branch